

### **REMARKS/ARGUMENTS**

Responsive to the Notice of Non-Responsive Amendment mailed April 27, 2010, Applicants submit herewith the complete Amendment Under 37 C.F.R. § 1.111 as filed on January 4, 2010, including a corrected claim set, as required by the Examiner.

In the Notice of Non-Responsive Amendment, the Examiner alleges that the amendments to claim 86 were not in compliance with the requirements of 37 C.F.R. § 1.121[c]. In particular, the Examiner alleges that Applicants have indicated with double brackets deletions from the claim at p. 7, but no text was contained within the brackets. In the present communication, Applicants have indicated by strikethrough of the chemical structures of claim 86, that these structures are to be deleted. Applicants respectfully submit that the amendments are in compliance with the requirements of 37 C.F.R. § 1.121[c].

Claims 68, 71, 73-74, and 85-87 are pending after entrance of the above claim amendments. Basis for these amendments may be found throughout the specification and claims as originally filed. No new matter has been added.

Applicants reserve the right to file subsequent applications, and the amendment and/or cancellation of claims is not intended as abandonment of the affected subject matter.

Since a brief history of this Application may be useful for following the amendments to the pending claims, Applicants provide the following. On January 29, 2009, a Final Office Action was issued, in which the Office indicated that then Claims 68, 71-74, and 85-87 would be allowable, if rewritten into independent form.

A Response was filed on May 29, 2009 in which Applicants had intended to rewrite Claims 68, 71-74, and 85-87 as requested and to cancel all other claims. Unfortunately, the claims as amended did not accomplish the intent, thus, provoking the present Office Action.

With the present Response, Applicants are providing further amendments to the once potentially allowable claims in order to place them into allowable form now. During the review of the Final Office Action, it appeared that the Office meant to state that Claims 72-74 were allowable and to reject Claim 71, rather than indicate that Claims 71-74 were allowable. As a result, Applicants have incorporated Claim 72 into Claim 71, and have canceled Claim 72 in this Response. It is hoped that Applicants presently have claims that are allowable.

### **Objections to Claims**

Claims 68 and 85 were objected to for reciting sulfur twice as an option for substituent "Z". Applicants have deleted the duplicate sulfur in both claims. Note: amended Claim 68 replaces the deleted sulfur with the correct item: selenium. In amended Claim 85, "Z" is now limited to NH and NR<sub>1</sub>. For these reasons, Applicants believe they have overcome the objections.

### **Rejections Under 35 U.S.C. § 112, second paragraph**

Claims 68 and 85-86 were rejected as being indefinite, due to inconsistent definitions for various substituents in the claims. Applicants have amended Claim 68 to limit R<sub>1</sub> and R<sub>2</sub> to C<sub>14</sub>H<sub>29</sub> and C<sub>12</sub>H<sub>25</sub>. It was noted that substituents R<sub>7</sub> and R<sub>8</sub> were no longer present in Claim 68, so they were deleted, along with some other language that no longer was pertinent or was considered duplicative. Typographical errors were corrected as well.

In Claim 85, Z was limited to NH or NR<sub>1</sub>. Claim 86 was amended to provide only the listed compound species and to delete the larger generic formula.

With these changes to the claims, Applicants believe Claims 68 and 85-86 are allowable.

**Rejections Under 35 U.S.C. §103**

Claims 68 and 85-86 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Nantz et al. (U.S. Patent No. 5,869,715) in view of Felgner (WO 91/17424). Claims 68, 71-74, and 85-87 also were rejected as obvious over Jessee (WO 95/02698) in view of Felgner.

It was stated on page 4 of the Office Action: "For the purposes of examination and the application of prior art, the instant claims will be interpreted to circumscribe the broader scope of the subject matter recited in each claim." Therefore, Applicants believe the inconsistency within the claims as to the definitions of various substituents caused the art rejections. Now that these inconsistencies have been rectified, Applicants assert that the amended Claims 68, 71, 73-74, and 85-87 are not rendered obvious by the cited art for reasons presented in prior responses. And, as acknowledged in the Final Office Action of January 29, 2009. Therefore, Applicants are not repeating the arguments, since they believe the claim amendments overcome the rejections.

If, for some reason, Applicants have misunderstood the situation, they respectfully request that the Examiner call the undersigned representative, so that the matter can be further clarified.

In Re the Application of:  
Wheeler  
Application No. 10/748,853  
Filed: December 30, 2003  
Page 12

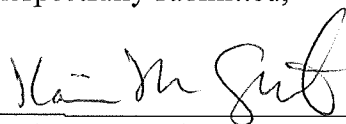
PATENT  
Attorney Docket No.: CA1818

### CONCLUSION

In view of the foregoing, Applicants believe all pending claims in this Application are in condition for Allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. The Examiner is invited to contact Applicants' undersigned representative if there are any questions relating to this submission.

The Commissioner is hereby authorized to charge as payment on the Petition for a Two-Month Extension of Time to Deposit Account No. 19-4880. Additionally, the Commissioner is hereby authorized to charge any fees that may be due, or credit any overpayments to Deposit Account No. 19-4880 referencing the above-identified attorney docket number.

Respectfully submitted,



Karin M. Gerstin  
Registration No. 54,119

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

**93179**

CUSTOMER NUMBER

Date: May 26, 2010